

JLW

Initial Statement of Reasons/Plain English
Overview/Non-Controlling Summary

Regulation 1620, Interstate and Foreign Commerce

Regulation 1620 interprets and explains the application of sales and use tax to sales of tangible personal property coming into or going out of California. It explains when such sales are subject to sales and use tax and when they are not.

Specific Purpose

The purpose of the proposed amendments is to interpret, implement, and make specific Revenue and Taxation Code section 6352. These amendments are necessary to provide guidance to that portion of the public which is affected by this statute.

Factual Basis

Regulation 1620 discusses the application of tax to sales of tangible personal property coming into or going out of California. In part, it provides that use tax does not apply to the use in this state of tangible personal property purchased and first functionally used outside of California if in the six-month period following the property's entry into this state it is used in interstate commerce more than half that time. Intermodal cargo containers are considered first functionally used outside of California if they are loaded with cargo prior to entering the state.

In discussions with the transportation industry, the Board has learned that all such containers are used exclusively in interstate commerce, and there are no manufacturers or other retailers that sell them in state. Under current law, the industry ensures that all containers pick up cargo out of state prior to their first entry into the state, so no sales or use tax revenue is currently generated from their use while in state. The Board has thus determined that, due to the peculiar nature of these containers, the requirement that they first take some sort of load outside the state engenders unnecessary burdens on taxpayers with no revenue effect. Therefore, the Board determined that the in-state use of such containers that do not first pick up loads outside the state would also be exempt from use tax as being in interstate commerce if certain conditions were met.

In addition, the Board concluded that the existing rules regarding intermodal cargo containers were created on a case-by-case basis and should be included in the regulation so as to both make them more readily available to the public and to cloak them with a presumption of correctness in the event of litigation. Finally, clerical errors elsewhere in the regulation that indicate that use tax applies to tangible personal property itself rather than to its use in California are corrected.

Subdivision (b)(1) - the phrase “with respect to” is deleted; the phrase “the use of” is inserted between the words “apply to” and “property” to clarify that use tax attaches to the use of property in this state, not to the property itself. Subdivision (b)(2)(A) - the phrase “the use of” is inserted between the words “apply to” and “property” and between “nor to” and “property” to clarify that use tax attaches to the use of property in this state, not to the property itself. Subdivision (b)(2)(B) is entitled “Interstate and Foreign Commerce” and the current language of the subdivision is redesignated (b)(2)(B)1. and entitled “In General;” the phrase “the use of” is inserted between “apply to” and “property” to clarify that use tax attaches to the use of property in this state, not to the property itself. New subdivision (b)(2)(C), “Intermodal Cargo Containers,” is added to specify the conditions under which such containers are considered to be first functionally used outside of California prior to their first entry into the state. Subdivision (b)(2)(C) - the word “however” is deleted; the phrase “the use of” is inserted between the words “to” and “certain” to clarify that use tax attaches to the use of property in this state, not to the property itself.

Pursuant to Government Code section 11346.5(a)(8), the Board of Equalization finds that the adoption of the proposed amendments will not have a significant adverse economic impact on private businesses or persons. The amendments are proposed to interpret, implement, and make specific the authorizing statutes in the context covered by the regulation for greater ease of understanding and to conform the regulation to recent legislation. These changes will clarify the interpretation or administration of the sales and use tax laws. Therefore, the Board has determined that these changes will not have a significant adverse economic impact on private businesses or persons.